

## DHHS POLICES AND PROCEDURES

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<b>Section V:</b>	<b>Human Resources</b>
<b>Title:</b>	<b>Safety and Benefits</b>
<b>Chapter:</b>	<b>Standard Operating Procedures for Workers' Compensation Program</b>
<b>Current Effective Date:</b>	<b>7/1/18</b>
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### **PURPOSE**

The purpose of these Standard Operating Procedures (SOP's) is to insure and maintain appropriate and consistent operation and administration of the Department of Health and Human Services (DHHS) Workers' Compensation Program, consistent with the North Carolina Workers' Compensation Act (the "Act"), the Rules of the North Carolina Industrial Commission ("NCIC" or "Commission"), promulgated pursuant to the Act, and guidelines and Standard Operating Procedures published by the Office of State Human Resources (OSHR), pertaining to the State Workers' Compensation program.

### **MANAGEMENT**

**1. WORKERS COMPENSATION ATTORNEY.** Oversight and Overall Management of the DHHS Workers' Compensation Program shall be vested with the Workers' Compensation Attorney (WC Attorney). The DHHS Workers' Compensation Attorney shall have the following Responsibilities:

- A. Overall management of the workers' compensation program for DHHS.
- B. Monitoring the program for compliance with the Workers Compensation Act and Rules of the Industrial Commission.
- C. Developing policy and procedure for the workers' compensation program.
- D. Providing consultation and advice to the Workers' Compensation Administrators (WCA's), Human Resources (HR) Directors, and Management throughout DHHS.
- E. Monitoring and Assessment of Pending Workers' Compensation Claims, with the following objectives:
  1. Proper handling of the claims by the facility, division, and school Workers' Compensation Administrators. The WC Attorney shall consistently communicate with and work with the Workers' Compensation Administrators and monitor claims management activities. This may include site visits as deemed appropriate.
  2. Participation in claims review meetings, with the facilities and divisions, for assessment of claims handling and for claims targeted for potential for settlement.
  3. Potential reduction of cost through identifying claims for settlement, and assessing the value of claims for settlement, making recommendations to DHHS.
  4. Proper management of these claims by the claims adjusters of the Third-Party Administrator (TPA) contracted through OSHR to administer workers' compensation claims for the State of North Carolina.

5. Assurance that the TPA is providing appropriate and timely compensation to injured employees, both medical care and indemnity compensation.
  6. Evaluating the program overall for more effective handling of workers compensation claims.
  7. Scheduling and Conducting Training for WCA's, in conjunction with or in addition to training being offered by the Office of State Human Resources (OSHR).
- F. Coordinating with the Safety Program Director to identify and eliminate safety hazards, to improve the safety of working environments and reduce potential for accidental injury to employees throughout DHHS.

**2. SAFETY PROGRAM DIRECTOR.** The DHHS Safety Program Director is responsible for overall management of the safety program throughout the agency, and shall oversee all Safety Officers within the facilities and divisions. The Safety Program Director shall coordinate with the Workers Compensation Attorney, providing updated safety data and reports generated for the Safety Program, to identify ways to improve the safety of working environments and reduce risks for accidental injury to employees throughout DHHS.

Safety Officers assigned to the facilities and divisions shall be responsible for ongoing inspections to identify any safety hazards and to recommend corrective actions, reporting to the Safety Program Director. The Safety Officers shall also investigate accidents throughout DHHS.

**3. PROGRAM MANAGEMENT THROUGHOUT DHHS**

**A. WITHIN THE FACILITIES AND DIVISIONS**

1. **Director Responsibility.** The facility and division Directors (“Directors”) shall have oversight responsibility to ensure that the Workers’ Compensation Program is being properly managed at the facility/division level, through the Human Resources Department.

2. **Employee Responsibility.** It is the employee's responsibility to timely notify management of any accident and/or occupational illness. Pursuant to the Act, notice shall be given to the employer “immediately” or “as soon thereafter as practicable.” Employees shall provide such notice to their supervisor or the next person in the chain of command if the supervisor is not available. The employee shall also notify their supervisor of any unsafe or hazardous working conditions. The employee is also responsible for keeping the employer informed of their work status, and medical treatment, by providing their supervisor or the Workers’ Compensation Administrator a copy of all work notes from the authorized treating physician, as soon as possible.

3. **Supervisor’s Responsibility.** Upon receiving notice of an employee’s report of alleged accident, it is the supervisor’s responsibility to immediately report the matter to the Workers’ Compensation Administrator and Safety Officer. The supervisor shall assist both the Workers’ Compensation Administrator and Safety Officer as

reasonably necessary in further investigation of the matter, so it may be properly reported to the Third-Party Administrator. Supervisors shall report any unsafe or hazardous working conditions which they observe or which are reported to them by the employee to the Safety Officer for the facility or division.

4. Workers' Compensation Administrator Responsibility. The Workers' Compensation Administrators assigned to the facilities and divisions shall have responsibility for administration of the workers' compensation program at the facility or division level. Such administration includes investigation of injuries or illness reported by employees, the timely reporting of claims to the Third-Party Administrator, monitoring the injured employee's work status, and maintaining communication with the injured employee. The Workers' Compensation Administrator is responsible for keeping in communication with the Third-Party Administrator, the WC Attorney as needed, and any attorney from the Attorney General's office, Workers' Compensation Section, assigned to a claim.

## B. AGENCY MANAGEMENT

1. Agency management, working with the WC Attorney, shall schedule and conduct necessary training for Workers' Compensation Administrators and any other Human Resources staff as appropriate regarding the workers' compensation program.

2. Agency financial and budget officers shall manage the workers' compensation fund, including any funds allocated from OSHR, for the payment and settlement of workers' compensation claims. This includes making timely payment for billings from the Third-Party Administrator, including payment for settlements.

3. Agency management shall ensure proper and timely processing of all paperwork affecting the workers' compensation program.

## CLAIMS REPORTING, INVESTIGATION AND MANAGEMENT

1. Employee Responsibility.

A. It is the employee's responsibility to provide timely notice of any accident or occupational illness to DHHS management. The employee shall immediately notify their supervisor upon occurrence of an accident or occupational illness or exposure. If the supervisor is unavailable, the employee shall report this to the next person in the chain of command. If immediate notice cannot be given due to the circumstances, the employee shall report the accident or illness as soon thereafter as practicable.

B. The employee shall notify their supervisor of any hazardous condition which the employee contends was a factor in causing their accidental injury or illness.

C. The employee shall complete an employee incident or accident report form,

provided by their supervisor or the Workers' Compensation Administrator, which describes the incident in the employee's own words.

2. Supervisor's Responsibility.

A. Upon receiving notice of an employee's accident, the supervisor shall promptly report the matter to the Workers Compensation Administrator and Safety Officer.

B. The supervisor shall direct the injured employee to a medical facility within the Third-Party Administrator's PPO network of authorized providers. (*This is available at [www.corvel.com](http://www.corvel.com).*) If immediate medical attention is rendered at the facility (*see subsequent SOP's*), the supervisor shall follow-up with the employee and the Workers' Compensation Administrator to confirm that the employee is referred to a medical facility within the TPA's PPO, for any follow-up medical care needed, and that any follow-up medical care is not to be rendered at the DHHS facility.

C. The supervisor shall provide the injured employee a workers' compensation authorization form for medical treatment and a blank work note to be presented at the medical facility.

D. The supervisor shall complete the accident reporting form for the facility or division and forward the form to the Workers' Compensation Administrator.

E. The supervisor shall assist both the Workers' Compensation Administrator and the Safety Officer as reasonably necessary to conduct further investigation of the matter, including the gathering of any written witness statements, or further information.

3. Workers' Compensation Administrator Responsibility.

A. Accident Investigation. Upon receiving notice of an accidental injury or illness to an employee, the Workers' Compensation Administrator shall initiate an investigation, in coordination with the employee's supervisor and the Safety Officer for the facility or division. Such investigation is to include interviews and taking written statements from the injured employee and any witnesses to the alleged accident or illness. Such accidents may be categorized as non-serious or serious, to be handled according to the applicable protocols. Information gathered, including written statements shall be provided to the Third-Party Administrator, as set out below.

B. Reporting of Claims. Upon receiving notice of an accidental injury or illness to an employee, as soon thereafter as possible, and preferably within 24 hours, the Workers' Compensation Administrator shall upload all the required and relevant information to the portal currently being used by the Third-Party Administrator, to generate the necessary forms for reporting the alleged workers' compensation injury, and thereafter shall complete the Form 19. The information required includes:

1. The facility or division where the employee is employed.

2. The employee's job title and position.
3. The location, date and time of the alleged accident.
4. Detailed information about what allegedly occurred, including the employee's version of what occurred, and written statements from the employee and any witnesses.
5. Information on the employee's average weekly wage, and whether the employee may qualify for salary continuation.
6. Any additional Information available to the employer which may be helpful to the TPA to determine whether the employee sustained a compensable injury by accident or occupational disease.
7. If the employee fails to immediately notify their employer of an alleged injury or illness, but later files an NCIC Form 18 with the Industrial Commission, the NCIC Form 19 must still be completed and entered into the TPA's claim system.

C. Communication with employee. The Workers' Compensation Administrator maintains communication with the injured employee, to verify ongoing medical treatment and monitor the employee's progress. The Workers' Compensation Administrator shall receive and keep any work status notes signed by the employee's authorized treating physician, and any other medical records that may be submitted.

D. Communication with Third-Party Administrator. The Workers' Compensation Administrator also keeps in communication with the Third-Party Administrator, to monitor the employee's status and to be sure that the employee is receiving timely and appropriate provision of both indemnity compensation and medical treatment.

4. Safety Officers Responsibility. The Safety Officer coordinates with the employee's supervisor and the Workers' Compensation Administrator to conduct any necessary investigation of the circumstances of the employee's accident. The investigation should identify any potential safety hazard that may have been a factor in the employee's injury or illness, and recommendation for elimination of the hazard. The Safety Officer reports to the Safety Program Director, who shall coordinate with the Workers' Compensation Attorney regarding appropriate remedial measures.

5. Third-Party Administrator Responsibility. The Third-Party Administrator is responsible for gathering all information related to the claim, and for consulting with the Workers' Compensation Administrator and if necessary, the Workers' Compensation Attorney, as to the compensability of the claim, i.e. whether it should be accepted or denied. No claims are to be denied without first consulting the Workers' Compensation Attorney. Final discretion to accept or deny a claim is vested in the Workers' Compensation Attorney

## **MEDICAL TREATMENT**

1. DHHS – Supervisor; Workers' Compensation Administrator. The employer shall ensure that an injured employee receives any immediate medical treatment that may be needed

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and that the employee is directed to an authorized medical provider. The supervisor or Workers' Compensation Administrator, in supervisor's absence shall direct the employee to an authorized medical provider, ER, urgent clinic, or after-hours clinic and shall provide the employee the necessary forms to authorize the immediate medical treatment and a blank work form for the medical provider to complete. If the situation involves critical or life-threatening injuries, it may be necessary to contact an ambulance or EMS for transport to an emergency facility, and the same shall be arranged without haste by the supervisor, chain of command, or WCA.

2. **Workers' Compensation Administrator.** The Workers' Compensation Administrator is responsible for reporting all accidents or illnesses timely to the Third-Party Administrator and verifying through the Third-Party Administrator that the employee is receiving ongoing reasonably necessary medical care. The Workers' Compensation Administrator shall communicate in follow-up with the employee as to the employee's work and medical status. The Workers' Compensation Administrator shall make sure the employee brings a completed Return to Work Form from the authorized treating physician and turns it into the WCA or supervisor after each visit to the physician, and shall keep the Third-Party Administrator informed of the work status of the employee.

3. **Third-Party Administrator.** Once the injury has been properly reported to the Third-Party Administrator, the Third-Party Administrator shall direct all further medical care, and shall keep the Workers' Compensation Administrator informed of the employee's ongoing medical treatment and progress.

4. **Minor Injuries / Urgent Care Treatment at Facilities.** Treatment for minor injuries and other urgent care may be rendered initially at the facility where the employee is employed, or adjacent DHHS facility, if employee health or other medical services are available. Ongoing medical treatment and management for a workers' compensation injury is not be provided at the employee health clinic or facility of employment. Ongoing medical treatment shall be directed by the Third-Party Administrator, to be provided by approved providers within the approved provider network (PPO).

5. **Emergency Room / Urgent Care.** When initial medical treatment cannot be rendered immediately at the facility of employment, due to the nature and extent of the injury or the limits and availability of the facility staff, the injured employee is to be referred by the employer to an urgent care facility, local hospital emergency room or other medical provider that is authorized by the facility, division, or school and within the Third-Party Administrator's provider network.

6. **Employee.** It is the employee's responsibility to keep the employer advised of his/her medical status. The employee is responsible for providing their supervisor or the WCA with all work notes from the authorized treating physician.

7. **Lack of Notice of Treatment.** If an employee obtains medical treatment prior to notifying their supervisor or DHHS management of the alleged injury or illness, and DHHS had no actual notice of the alleged injury or illness, once the employee actually gives notice to

DHHS management through the supervisor, Workers' Compensation Administrator, or other management, this is to be immediately reported to the Workers' Compensation Administrator, who shall then report the matter to the Third-Party Administrator, following the normal reporting procedures. Thereafter a determination will be made regarding whether payment for such medical treatment will be approved or denied. The employee is put on notice that payment for such unauthorized medical treatment may be denied.

8. Employee Health Clinic's Responsibility. All cases in which the injured employee receives initial medical treatment at an employee health clinic are subject to the following conditions:

- A. If an employee misses more time from work than the initial day of the incident, the clinic shall report this to the Workers' Compensation Administrator within 24 hours. The Workers' Compensation Administrator shall report this to the Third-Party Administrator.
- B. If an employee is placed on more than seven (7) days of restricted duty cumulatively, the clinic shall report this to the Workers' Compensation Administrator within 24 hours. The Workers' Compensation Administrator shall report this to the Third-Party Administrator.
- C. In-house medical notes must be sent to the Workers' Compensation Administrator within 24 hours for any cases which meet the above-mentioned criteria. The Workers' Compensation Administrator shall report this to the Third-Party Administrator.
- D. Should it be necessary to refer an employee for specialty care, referral shall be made to a provider within the PPO Network of the Third-Party Administrator. The Third-Party Administrator shall direct all follow-up medical care.
- E. If an employee is referred to an outside physician, a Return to Work Form - Medical Authorization and Attending Physician's Report, must accompany the employee.
- F. If an employee is referred to an outside physician, the Workers' Compensation Administrator must be notified within 24 hours so the appropriate contacts can be made.

## **CLASSIFICATION OF INJURIES**

1. Serious Injuries. Accidents involving serious injury require immediate investigation, to be coordinated by the Workers' Compensation Administrator and Safety Officer. The Workers' Compensation Administrator shall investigate to determine facts

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surrounding the employee’s alleged injury by accident, to assist the Third-Party Administrator and the Workers Compensation Attorney (if necessary), in deciding of the compensability of the matter. The Workers’ Compensation Administrator shall also assist in conducting any further investigation that may be necessary as requested by the TPA, WC Attorney, or Safety Officer. In the event an accident involves a serious injury and/or hospitalization, notification shall be made immediately to the Safety Officer and to the Third-Party Administrator. Serious Injuries shall include, but shall not be limited to the following:

- a. Death;
- b. Serious occupational disease;
- c. Major broken bones;
- d. Paralysis;
- e. Serious head injury, including concussion;
- f. Severe cuts;
- g. Amputation;
- h. Loss of sight;
- i. Serious back injuries.

2. Fatality or Amputation. \* In the event of an injury to a state, contract or temporary employee that results in fatality, the employer must report the matter to OSHA within eight (8) hours. Also notify the Agency HR Director and the Agency Safety Director. In the event of fatality, also notify the DHHS WC Attorney and General Counsel.

3. Loss of eyes or hospitalization. In the event of an injury to a state, contract or temporary employee that results in loss of eyes or hospitalization, the employer must report the matter to OSHA within (24) hours.

4. Single Accident with multiple persons injured. If a single accident involves three or more injured employees requiring hospitalization or the accident involves the death of a state employee, notification shall be made within 8 hours to:

- A. Division or Facility Director.
- B. DHHS Safety Director.
- C. Dept. of Labor Occupational Safety and Health Administration (OSHA). Ph: (919) 733-3322.
- D. OSHR. Ph: (919) 733-6316

(\*Effective January 1, 2015, Employers are required to contact OSHA for any work-related fatality within (8) hours. Inpatient hospitalizations, all amputations and all losses of an eye must be reported within (24) hours. An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or

without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions (tissue torn away from the body), enucleations (removal of the eyeball), deglovings (skin torn away from the underlying tissue), scalping's (removal of the scalp), severed ears, or broken or chipped teeth.)

## **DETERMINATION OF COMPENSABILITY**

1. Report of Claim by Worker Compensation Administrator. The Workers' Compensation Administrator is responsible for conveying all employee reports of injury or alleged occupational illness to the Third-Party Administrator. All relevant information shall be uploaded electronically through the TPA Portal.

2. Third-Party Administrator. Following receipt of the required information from the Worker Compensation Administrator, the adjuster with the Third-Party Administrator shall investigate the matter, to determine whether the claim is compensable under the N.C. Workers' Compensation Act. This includes collecting any incident reports and written statements from the Workers' Compensation Administrator, as well as taking a recorded statement of the injured employee.

3. Compensability Consultation. Following the investigation by the Third-Party Administrator, the assigned adjuster shall consult the Workers Compensation Administrator to recommend whether the claim should be accepted or denied. In all claims in which the adjuster or Workers' Compensation Administrator anticipate possible denial of the claim, the Workers' Compensation Attorney shall first be consulted. The final decision whether the claim shall be accepted or denied is in the discretion of the Workers' Compensation Attorney.

### 4. Filing of Forms

- a. Compensable Claims. If the claim is determined to be compensable, the adjuster files a NCIC Form 60 with the Industrial Commission, accepting the claim. The adjuster sends a copy to the injured employee or their attorney of record, if retained.
- b. Denied Claims. If the claim is determined to be not compensable, the adjuster files a NCIC Form 61 with the Industrial Commission, denying the claim. The adjuster sends a copy to the injured employee or their attorney of record, if retained.
- c. Undetermined. If more time is needed to investigate the claim, the adjuster files a NCIC Form 63 with the Industrial Commission. This process will

provide for paying disability and/or medical compensation without prejudice to later deny the claim. The adjuster sends a copy to the injured employee or their attorney. Once the investigation is completed, the adjuster files with the Industrial Commission either a Form 60 accepting the claim or a Form 61 denying the claim.

For completing the Form 63, Complete Section 1, Indemnity Benefits if both indemnity and medical compensation are being paid without prejudice to later deny the claim. Investigation may continue for up to 120 days. Complete Section 2. Medical Benefits Only if only medical compensation is being paid without prejudice to later deny the claim. There is no time limit for this investigation to occur, but medical compensation may not exceed \$2,000.

- d. Claim of additional injured body parts as related to the claim. If an injured employee later files a Form 18, amended Form 18, Form 33, or other communication, alleging injury to additional body parts or additional conditions, other than those conditions that were initially admitted or denied, it is the responsibility of the TPA to investigate further so that a decision on compensability of the new allegations. The WCA may be called upon to assist in obtaining additional information. The TPA, in conjunction with the WCA and WC attorney shall make determination of compensability. If the new alleged injuries or conditions are determined to be related to the original compensable claim, and therefore compensable, the TPA shall file an amended Form 60 with the Industrial Commission, specifying the new claims that shall be accepted. If the alleged injuries or conditions are determined to be not related to the original claim, and therefore not compensable, the TPA shall file a Form 61 or amended Form 61 with the Industrial Commission. If more time is needed to investigate, the TPA files a Form 63 with the Industrial Commission, following the requirements for the same. A copy of the amended Form 60, Form 61, or amended Form 61 Form 63 shall be sent to the injured employee or the employee's attorney.

## **DEATH CLAIMS**

1. In the event of death, the deceased employee's supervisor shall work with the Workers' Compensation Administrator to complete the First Notice of Loss claims reporting process with the Third-Party Administrator, and to initiate investigation. The TPA claims adjuster may request additional information from the employer, i.e. family information, death certificate, marriage certificate, birth certificates of children etc.

2. The deceased employee's eligible dependent(s) are entitled to receive 66 2/3% of the employee's average weekly wage for 500 weeks, 9.62 years, to be divided equally among the eligible dependents. All eligible dependents under 18 years of age as of the date of the

employee's death will continue receiving death benefits until age eighteen (18) despite expiration of the 500 weeks benefit period.

3. Pursuant to the Workers' Compensation Act, burial expenses up to a maximum of \$10,000.00 shall be paid directly to the funeral facility.

## **ESTABLISHING COMPENSATION CRITERIA**

1. The following DHHS employees are also subject to the provisions of Article 12B of Chapter 143 (§143-166.13 through §143-166.20):

*Note: All DHHS employees who are sworn state law enforcement officers with the power of arrest and are certified by the Criminal Justice Training and Standard Act.*

A. The Department's management is responsible for initially determining the application of this article to an employee's reported injury or incapacity. The initial finding shall be submitted to the Third-Party Administrator for further investigation and to the Workers' Compensation Attorney.

B. A final decision on the employee's eligibility for benefits under these statutes shall be made by the Workers' Compensation Attorney or other designee of the Secretary of DHHS.

C. Employee appeals from a final Department determination shall be handled in accordance with N.C.G.S. §143-166.19.

D. An eligible employee shall receive full salary and related benefits for up to two (2) years while absent from work due to an incapacity resulting from an injury by accident or an occupational disease arising out of or in the course of the performance of official duties. This benefit shall be in lieu of all compensation provided for the first two (2) years of incapacity by N.C.G.S. §97-29 and §97-30. The absence shall not be charged against sick or other leave. This benefit begins on the first date of disability. Should the incapacity to work continue for more than two (2) years, the employee shall be eligible for compensation payments as provided under the Workers' Compensation Act. The employee's salary continuation received during the two-year period shall be deducted from the period of eligibility for disability compensation pursuant to N.C.G.S. §97-29 (temporary total disability) or N.C.G.S. §97-30 (temporary partial disability).

2. The following DHHS employees are additionally subject to the provisions of N.C.G.S. §115C-338: All full time (not part time, temporary or substitute) employees who are assigned to be educators within DHHS facilities or schools.

A. The Department's management is responsible for initially determining the application of this section to a reported injury or disability. The initial finding shall be

submitted to the Third-Party Administrator and to the Workers' Compensation Attorney.

B. A final decision on the employee's eligibility for benefits under these statutes will be made by the Workers' Compensation Attorney or other designee of the Secretary of DHHS, by the Secretary's capacity with the DHHS Board of Education.

C. The Workers' Compensation Attorney or other designee by the Secretary of DHHS shall provide agency management written notice of the Secretary's decision within the time frame specified by law and the Department's management shall give the employee written notice of the decision. Employee appeals from the Secretary's decision shall be handled in accordance with N.C.G.S. §115C-338(c).

D. An eligible employee shall receive full salary and related benefits for up to one (1) year while absent from work due to any injury or disability resulting from or arising out of an episode of violence during the course of employment or any activity incidental thereto. This benefit shall be in lieu of all other income or disability benefits payable under workers' compensation. This benefit begins with the date of the incident. Should the incapacity continue for more than one (1) year, the employee shall be eligible for compensation payments as provided under the Workers' Compensation Act.

3. For employees subject to and eligible for compensation payments under both N.C.G.S. §143, Article 12B and N.C.G.S. §115C-338, the provisions of the former shall take precedence.

4. An employee receiving salary payments under N.C.G.S. §143, Article 12B or N.C.G.S. §115C-338 shall be additionally eligible for non-compensation benefits as provided by the Workers' Compensation Act and OSHR policy.

5. Department policy regarding on-the-job injury work reassignment and placement shall apply to employees who receive compensation benefits under Chapter 97, Article 12B of Chapter 143, and/or §115C-338.

6. Salary continuation is the total base pay on the employee's salary statement and does not include overtime pay, shift differential pay, holiday pay, or other additional earnings, to which the employee may have been entitled prior to the incapacity.

## **RETURN TO WORK**

1. Return to Work / Work Reassignment Pre-Maximum Medical Improvement. An employee who has been accepted for either workers compensation or salary continuation due to the work-related injury or illness may be given temporary work reassignment of duties, during the healing period and prior to reaching maximum medical improvement (MMI). Such reassignment shall be offered when agency management determines there is necessary and existing work available which is suitable to the employee's capacity. The assignment will be

considered suitable employment when approved by the authorized treating physician and when the injured employee otherwise meets the qualifications for the temporary reassignment. The reassignment may be to the position the employee held at the time of injury, to another position in the same classification, or to a position in a different classification. Reassignment shall be limited to positions within the employing facility, division or school. Pre-MMI, the employee may be assigned work comprised of tasks from other positions or “make work” and the work does not need to be a position otherwise available in the labor market. It may be rehabilitative or other noncompetitive employment.

- A. The facility or division Workers’ Compensation Administrator shall monitor the status of injured employees along with the Third-Party Administrator. When the authorized treating physician determines that an employee may work at light duty or modified work, the WCA shall work with appropriate facility or division management to determine whether temporary work reassignment is possible given the employee’s qualifications, work restrictions, and the availability of suitable work.
- B. The facility or division human resources manager, shall identify transitional jobs which can be modified but still retain the essential functions.
- C. Light duty or work reassignment, prior to MMI is to be approved by the authorized treating physician in writing. The Workers’ Compensation Administrator, working with management and supervisors, shall prepare a functional job description of the light duty, to be submitted for approval by the authorized treating physician. The WCA shall submit the functional job description to the adjuster with the Third-Party Administrator.
- D. The Third-Party Administrator is responsible for submitting the functional job description to the authorized treating physician for approval. Upon completion by the physician, the Third-Party Administrator shall notify the Workers Compensation Administrator and shall provide the WCA a copy of the physician signed job description.
- E. Work reassignment shall not exceed 120 days without the prior written approval of the Workers Compensation Attorney. Work reassignment may thereafter be extended in 120 days increments, with approval of the WC Attorney.
- F. The injured employee’s performance in the work reassignment shall be monitored by designated agency management. Where it is determined, with input from the authorized treating physician, that continued employment may be detrimental to the employee’s recovery, this information shall be shared with the WCA and the WC Attorney. If different suitable work cannot be identified for the employee, the employee shall be returned to workers’ compensation leave status, and the TPA shall be notified to reinstate compensation.
- G. If the employee is unable to return to regular duties at the end of a 120 day period, and suitable continuing temporary work is available, the agency personnel manager

and/or Workers' Compensation Administrator may secure written approval from the Workers' Compensation Attorney to continue the work for a specified period of time.

2. Return to Work at Maximum Medical Improvement. Once an employee has reached maximum medical improvement from the injury or illness sustained and has been released to return to work without restrictions, *(so long as the employee has not previously been separated from employment due to unavailability pursuant to OSHR policy; a situation that might arise if the date of MMI is over one year from the date of accident)*, it is DHHS policy to return the employee to their prior position or equivalent position. If the employee can no longer perform the regular duties of their prior position, due to permanent restrictions from the authorized treating physician, DHHS policy is to attempt to find the employee a suitable position within their capacity within the facility or division of their employment or otherwise within DHHS. This effort will be conducted through a job search within the Department. The employee will still need to apply for any suitable position. If suitable employment cannot be found, the employee may ultimately be separated from employment pursuant to OSHR policy.

A. When an employee has reached maximum medical improvement, or prior to reaching maximum medical improvement and the treating physician determines the employee cannot continue employment in the employee's former position and/or classification, the facility or division management shall attempt to identify other positions in which the employee's limitations can be reasonably accommodated. Management will make every effort to place the employee in a position comparable to the level held at the time of the injury; however, placement may be to a higher or lower classification level. The rate of pay in the new assignment shall be determined in accordance with relevant salary administration policy and the Workers' Compensation Act.

B. If the employee cannot be placed in suitable employment within 15 days by the employing facility or division, the personnel manager and/or Workers' Compensation Administrator shall give written notice to the Workers' Compensation Attorney and to the DHHS Central HR recruitment section, requesting assistance with possible placement in other facilities or divisions within the Department. Such notice shall include a current state application for the employee and current medical diagnosis with restrictions. Work placement efforts will continue for a period not to exceed 30 days, except with approval of the Workers' Compensation Attorney.

C. If the employee cannot be placed in suitable employment within the Department, upon reaching maximum medical improvement, due to permanent restrictions, the employee may be separated from employment, due to unavailability, pursuant to OSHR policy.

D. Upon submitting written notice to the Workers' Compensation Attorney, the facility or division shall assist the employee to complete all necessary forms required to apply for short-term or long-term disability if the employee has the required years of service time to be eligible.

1. If the employee is approved for long-term disability by the Retirement System, the employee may be terminated after the 30-day period. If terminated, immediate notification in writing shall be made to the Retirement Benefits Coordinator in the [Retirement System Benefits Section](#) at 325 N. Salisbury Street, Raleigh, NC 27603-1385. It is the responsibility of the Coordinator to follow-up with the employee regarding medical coverage under the Retirement Group.
2. If the employee is on workers' compensation leave at the time of separation from employment, the employee is eligible to receive a lump sum payment for vacation/sick leave. Note: While on workers' compensation leave, the employee shall continue to accumulate vacation and sick leave to be credited to the employee's account for use upon return. If the employee does not return, vacation and sick leave accumulated during the first 12 months of leave will be paid in a lump sum along with other unused vacation which was on the books at the time the employee went on workers' compensation.
3. If the employee is not eligible to receive disability through the Retirement System, the Workers' Compensation Attorney shall be contacted for consultation prior to separation from employment.

3. Refusal of Suitable Employment. If an employee refuses work reassignment suitable to the employee's capacity, the Workers' Compensation Administrator shall contact the Workers' Compensation Attorney and the adjuster with the Third-Party Administrator. The WC Attorney shall direct the Third-Party Administrator as to referral of the matter to the Attorney General's office to initiate the procedure for filing a Form 24 Application for suspension of benefits.

4. Facility / Division Responsibility for Return to Work. Each facility or division shall have written return to work procedures. These procedures shall detail steps to follow in returning an employee to light duty or modified duty. The essentials of the procedures should include:

- a. A program statement;
- b. Clear responsibilities;
- c. Essential job functions to be provided to the physician upon request; and
- d. Identifying alternative duties.

5. Workers' Compensation Administrator Responsibilities for Return to Work

- a. The WCA shall work with management to identify a suitable job.
- b. The WCA shall contact the Workers' Compensation Attorney immediately if no suitable alternate duty can be identified.

- c. The WCA shall contact the Workers' Compensation Attorney immediately if the employee has reached maximum medical improvement and is unable to return to their previous job due to permanent restrictions assigned by the authorized treating physician.

6. Separation Due to Unavailability of Work. Pursuant to OSHR policy, when an employee is on workers' compensation leave of absence, and the employee is unable to return to all their prior position's essential duties as set forth in the employee's job description, or designated work schedule, due to a medical condition, or the vagueness of a medical prognosis, the employee may be separated due to unavailability on the earliest of the following dates:

- (a) After the employee has reached maximum medical improvement for the work-related injury for which the employee is on workers' compensation leave and the agency is unable to accommodate the employee's permanent work restrictions related to said injury; or
- (b) 12 months after the date of the employee's work-related injury.

## **WORKERS' COMPENSATION BENEFITS, LEAVE, AND EFFECT ON OTHER BENEFITS**

As set forth in OSHR SOP's entitled Workers Compensation Benefits, Leave, and Effect on Other Benefits, the following benefits also apply to employees while on workers' compensation leave.

- 1. Supplemental Pay. An employee may choose to use partial sick or vacation leave earned prior to the injury to supplement the weekly benefit while on workers' compensation leave. This is found on the Leave Option form. The NC Office of State Human Resources annually publishes a schedule showing the amount of leave that may be used per week available on the OSHR website, <http://workerscomp.nc.gov>.
- 2. Vacation and Sick Leave. An employee will continue to accumulate vacation and sick leave while on workers' compensation. This leave will be credited to the employee's account for use upon return to permanent full duty. If the employee does not return to permanent full duty from workers' compensation leave, the vacation and sick leave accumulated only for up to twelve (12) months will be exhausted by a lump sum payment along with other unused vacation, or bonus leave that was on hand at the time of the injury, as well as any bonus leave granted subsequently.
- 3. Health Insurance. An employee's State Health Plan coverage continues while on workers' compensation leave. The State continues to pay the monthly premium for minimal coverage for the employee. Premiums for additional coverage or any dependent coverage, must be paid directly by the employee. Once an employee is separated from the State Agency or University, the employee is no longer eligible to participate in the State Health Plan.

4. Longevity Pay. An employee who is eligible for longevity pay shall receive their annual longevity payments while out on workers' compensation leave.

5. Reinstatement Salary. Upon reinstatement, an employee's salary will be computed based on the last salary plus any legislative increase and any performance increase for which the employee is entitled.

6. Total State Service Credit. An employee continues to receive total state service credit while on workers' compensation leave.

7. Retirement Service Credit. An employee does not receive retirement credit while on workers' compensation leave. The employee, as a member of the State Retirement System, may purchase credits for the period of time they were on workers' compensation leave after returning to work. Upon request by the employee, the State Retirement System will provide a statement of the cost and a date by which purchase must be made. If the employee does not purchase the credits back by that date, the cost must be recomputed.

8. Disability Income Plan of North Carolina. Eligible employees who become temporarily or permanently disabled and are unable to perform their regular work duties may receive partial replacement income through the Disability Income Plan of North Carolina (the Plan).

Employees are eligible if they:

- (a) are permanent and work at least 30 hours per week for nine months of the year; and
- (b) participate as a member of the Teachers' and State Employees' Retirement System for at least one year during the 36 months preceding the disability

There is a 60-day waiting period before benefits become payable by the Plan. During this period, accumulated sick or vacation leave may be used.

A. Short-Term Disability. Eligible employees may receive a monthly short-term benefit equal to:

- (1) fifty (50) percent of their monthly salary, plus
- (2) fifty (50) percent of their annual longevity

Monthly benefits during the short-term period cannot exceed \$3,000. This monthly benefit is reduced by any workers' compensation benefit received. Short-term benefits are available for up to one year and may be extended for up to one additional year if the disability is temporary and is likely to end within that additional year.

B. Long-Term Disability. Long-term benefits are payable after the conclusion of the short-term disability period or after salary continuation payments cease, whichever is later. To qualify for long-term disability benefits, an employee must have at least five years of membership service with the Retirement System during the 96 months preceding the conclusion of the short-term disability period.

During the first three years of long-term disability, eligible employees may receive a

- monthly long-term benefit, equal to:
- (1) 65% of monthly salary, plus
  - (2) 65% of annual longevity pay

Monthly benefits during the long-term period cannot exceed \$3,900. This amount is reduced by any Workers' Compensation (excluding permanent partial Workers' Compensation awards); any primary Social Security benefits, regardless of whether the employee elects to receive such benefits; and further reduced by any monthly payments from the federal Veteran's Administration, any other federal Agency/University, or payments made under the provisions of General Statute 127A-108 to which the employee may be entitled if these payments are based on the same disability for which the employee is receiving plan benefits. However, the benefit will be no less than \$10 a month.

After the first 36 months of the long-term disability period, the benefit is reduced by an amount equal to the primary Social Security benefit the member would be entitled had he or she been awarded Social Security disability benefits. Long-term benefits are payable to eligible employees until they become eligible to receive an unreduced service retirement under the North Carolina Teachers' and State Employees' Retirement System.

9. Leave Policy. While an employee is on workers' compensation leave, the employee is responsible for providing all work notes from the authorized treating physician to the supervisor immediately upon receipt.

A. If on the date of injury, the employee leaves work for medical treatment and the authorized treating physician provides a work note that the employee not return to work, no leave shall be charged.

B. If the authorized treating physician issues a Work Note removing the employee from work for any time period, the seven (7) day waiting period begins as of that date (excluding the date of injury) no matter how many hours the employee has or has not worked during that work week. The employee must use their own leave during the seven (7) day waiting period for workers' compensation disability benefits to begin or go on leave without pay. The seven (7) day waiting period may be either seven (7) consecutive days or may be spread out over time. During the 7-day waiting period, the employee may elect to take sick, vacation, or bonus leave, if available, or go on leave without pay. Only full days for which the employee is excused from work by the authorized treating physician count against the 7-day waiting period.

C. The employee shall elect the leave options and complete the appropriate Leave Options form to advise the employer whether they want to use their vacation or sick or bonus time during the 7-day waiting period, and/or if they want to use such vacation, sick, or bonus leave for supplemental pay while on workers' compensation benefits beyond the 7-day waiting period.

D. If the employee is on workers' compensation leave for at least twenty-one (21)

days, the employee is entitled to workers' compensation indemnity compensation for the 7-day waiting period. However, any leave used during the 7-day waiting period will not be reinstated per OSHR policy. *In effect for this 7-day time period only, the employee may end up receiving both pay for vacation, sick, or bonus time, as well as total disability compensation.*

E. Authorized medical visits during working hours should not be charged against the employee's leave. *If you use the OSC Integrated HR/Payroll System (formerly known as BEACON), process the time under the 9680 code. Time away from work for authorized medical visits due to a workers' compensation claim is limited to reasonable time and any excess time is to be charged as vacation, sick leave or leave without pay.*

10. Salary Continuation for Eligible Employees.

To receive salary continuation, an employee must be eligible as defined in N.G.G.S. Chapter 143.

A. The Workers' Compensation Administrator shall report the employee's eligibility to the Third-Party Administrator and the Workers' Compensation Attorney. The TPA shall thereafter participate as needed in the process to determine if the employee's injury is eligible for salary continuation.

B. The Third-Party Administrator investigates the claim and then will follow-up with the Workers' Compensation Administrator and the Workers' Compensation Attorney regarding what the investigation reveals, to determine if an injury is the result of or arises out of an episode of violence, resistance, or due to other special hazards that occur while the employee is performing official duties. The Third-Party Administrator adjuster then makes recommendation to the Workers' Compensation Administrator and the Workers' Compensation Attorney.

C. The Workers' Compensation Attorney or other designee of the Secretary of DHHS shall determine whether the employee is qualified for salary continuation and follows the procedure previously set out herein.

## **CALCULATION OF AVERAGE WEEKLY WAGE AND COMPENSATION RATE**

1. The calculation of the employee's average weekly and preparation of the Industrial Commission Form 22 shall be done by the Workers' Compensation Administrator based upon records from Human Resources. The completed Form 22 shall be provided by the Workers' Compensation Administrator to the Third-Party Administrator. Questions regarding preparation of the Form 22 should be directed to the Workers' Compensation Attorney.

As set forth in OSHR SOP's, in preparing the Form 22, include only the following wage categories for the "Amount Earned" column:

- a. Regular hourly pay
- b. Shift differential pay
- c. Shift premium pay
- d. Holiday pay
- e. Longevity pay
- f. Sick pay
- g. Vacation pay
- h. BONUS LEAVE PAY: Designated leave hours granted by NC General Assembly that were actually used as leave time by the employee.
- i. In-range pay for temporary assignment: Temporary change in duties that may be altered by employer at any time.
- j. Short Term Disability (STD) pay received pursuant to the State of North Carolina Disability Income Plan: The STD amount received by the employee during the prior 52 weeks should be multiplied times two to approximate the wages the employee would have earned had they been working.
- k. Workers' Compensation temporary total disability (TTD) or temporary partial disability (TPD) compensation: The calculated average weekly wage applicable to the workers' compensation leave period(s) during the prior 52 weeks should be included to approximate the employee's earnings during the time period the employee was out of work.

**DO NOT INCLUDE OVERTIME PAY** in the employee's "Amount Earned" column until you consult the DHHS Workers' Compensation Attorney for guidance. (*Overtime pay that is regularly earned, i.e. more than 6 months of the year, may be determined to be included, per consultation with the Workers' Compensation Attorney.*)

**DO NOT INCLUDE BONUS PAY** granted by the General Assembly. Bonus Pay is a one-time payment of additional funds that is not related to time actually worked by the employee for purposes of calculating the employee's average weekly wage (AWW).

**DO NOT INCLUDE BONUS LEAVE PAYOUT RECEIVED ON JUNE 30, 2017** that the employee elected to receive instead of continuing to carry forward the General Assembly granted bonus leave time.

**DO NOT INCLUDE DISABILITY COMPENSATION** the employee receives from any source other than State of North Carolina Disability Income Plan short term disability income payments.

**DO NOT INCLUDE LONG TERM DISABILITY COMPENSATION received pursuant to the State of North Carolina Disability Income Plan.** This pay was received while the employee was separated from employment; therefore, it does not represent wages earned or that would have been earned by the employee during the prior

52 weeks.

Divide the employee's yearly earnings by fifty-two (52) weeks to calculate the employee's average weekly wage (AWW) in dollars.

Multiply the calculated average weekly wage (AWW) amount by 0.6667 to obtain the employee's weekly disability compensation rate (CR).

## **TEMPORARY TOTAL DISABILITY COMPENSATION**

1. Total Disability Compensation, which is commonly referred to as "temporary total disability" or "TTD" is appropriately paid when an injured employee has been removed entirely from work by the authorized treating physician or when the employer cannot provide the employee with "suitable employment" within the employee's work restrictions as assigned by the authorized physician.

2. Employee Responsibility. The employee is responsible for providing the employer with all work status notes from the authorized treating physician. The employee may also be required to complete the IC Form 90 verifying that the employee is not earning wages in any employment.

3. Workers Compensation Administrator Responsibility. As noted herein, the Workers' Compensation Administrator shall calculate the employee's average weekly wage and compensation rate and complete the Form 22, and submit the same to the Third-Party Administrator.

4. Third-Party Administrator Responsibility. The assigned adjuster with the Third-Party Administrator shall review and verify the Form 22 wage calculations and shall issue timely checks to the employee to pay temporary total disability compensation, based upon the Form 22 calculations, subject to the statutory maximum in effect for that year. Payment of temporary total disability compensation shall continue so long as the authorized treating physician removes the employee from work or the employer is unable to provide suitable employment, or the passage of 500 weeks from the date the employee first receives TTD, for claims that arose on or after June 24, 2011, or until further order of the Industrial Commission.

## **TEMPORARY PARTIAL DISABILITY COMPENSATION**

1. Temporary Partial Disability Compensation, which is commonly referred to as "TPD" is appropriately paid if an injured employee returns to work either pre-maximum medical improvement or post-maximum medical improvement, and is unable to earn the same wages the employee was earning as of the date of injury by accident. Temporary Partial Disability is calculated and the employee will be paid sixty-six and two-thirds percent of the difference between the new average weekly wage and the average weekly wage at the time of the injury by

accident. The employee may receive TPD for a maximum of 500 weeks, when combined with any period the employee also received temporary total disability for the same claim. Therefore, any weeks of TTD paid is deducted from the 500 weeks of TPD.

2. **Employee Responsibility.** The employee is responsible for providing the employer with all work status notes from the authorized treating physician. If the employee returns to work for a different employer at a wage less than he/she was earning as of the injury by accident date, the employee is responsible for providing the DHHS, through the Third-Party Administrator, written verification of his/her wages with the new employer.

3. **Workers Compensation Administrator Responsibility.** If the employee returns to work for the employer at a wage less than he/she was earning as of the injury by accident date, due to the work-related injuries, the Workers Compensation Administrator shall prepare and provide wage information to the Third-Party Administrator, including a new Form 22, showing the wages now being earned, with calculation of the amount that should be paid as temporary partial disability.

4. **Third-Party Administrator Responsibility.** The assigned adjuster with the Third-Party Administrator shall verify the employee's eligibility for temporary partial disability compensation. The adjuster shall review and verify the Form 22 wage calculations. If the employee returns to work for a different employer at a wage less than he/she was earning as of the injury by accident date, due to the work-related injuries, the Third-Party Administrator shall inquire of the employee and is shall secure documentation of the employee's wages now being earned with a new employer. The Third-Party Administrator shall prepare the appropriate Industrial Commission Form for payment of temporary partial disability and shall issue timely checks to the employee to pay temporary partial disability compensation. Temporary partial disability compensation may continue potentially up to 500 weeks, so long as the employee continues to remain unable to earn the same wages as prior to the injury by accident, and is in fact earning less wages. In calculating the 500 weeks, credit is given for all weeks that the employee received temporary total disability compensation.

## **PERMANENT PARTIAL DISABILITY COMPENSATION.**

1. **Maximum Medical Improvement with Permanent Impairment Rating.** Once the employee is determined to be at maximum medical improvement (MMI), per the assessment of the authorized treating physician (ATP), if the physician also assesses permanent impairment or disability, the employee may be entitled to compensation for such permanent partial disability, commonly referred to as "PPD." Compensation for permanent partial disability is set forth in an itemized schedule under N.C.G.S. §97-31. The authorized treating physician will complete the IC Form 25R for any PPD rating.

2. **Third Party Administrator Responsibility.** Upon the physician's assessment of MMI and a PPD rating, the Third-Party Administrator shall secure the physician's preparation and signature on the IC Form 25R for the PPD rating. The TPA shall then calculate the

compensation due for the PPD rating and prepare the Form 26A for signature by the employee and the employer. After all parties have signed the Form 26A, the TPA forwards it along with the necessary medical records to the Industrial Commission for approval. Upon approval of the Form 26A, the TPA generates payment to the employee. This procedure is not followed if the employee has reached maximum medical improvement with a PPD rating but continues to be totally disabled.

3. **Second Opinion.** Pursuant to N.C.G.S. §97-27(b), the employee has the right to a second opinion on the PPD ratings, by a physician of his/her choosing or physician agreed upon by the parties. If the employee requests such a second opinion, the Third-Party Administrator shall set this up, after consulting with the Workers' Compensation Administrator and with agreement of the employer. The adjuster and WCA may also consult the Workers' Compensation Attorney. Following the second opinion examination, the parties may proceed with resolution of payment for the PPD rating, either through the Form 26A or other compromise settlement agreement, as may be agreed by the parties. The Form 26A or any other compromise settlement agreement must be approved by the Industrial Commission.

4. **Maximum Medical Improvement With Ongoing Total Disability.** If the employee is unable to return to work with the employer at the time he/she reaches maximum medical improvement, due to permanent work restrictions from the authorized treating physician, then the PPD rating will not be paid. After reaching MMI, if the employee continues to be disabled within the meaning of the Act, the employee may be entitled to continued payment of total disability compensation. For claims arising on or after June 24, 2011, the employee is limited to 500 weeks of TTD compensation.

5. **Schedule of Benefits per N.C.G.S. §97-31.** Permanent Partial Disability Benefits are paid in accordance with the following schedule of injuries, set out in the statute:

<b>Body Part / Loss</b>	<b>Maximum Weeks of Compensation</b>
Thumb	75
Finger – 1st	45
Finger – 2nd	40
Finger – 3rd	25
Finger – 4th	20
Toe – Great	35
Toe – Other	10
Hand	200
Arm	240
Foot	144
Leg	200
Eye	120
Back	300

Compensation due is calculated by multiplying the percentage of the PPD rating times

the maximum number of allowed weeks. (Example: A 10% PPD rating to the back is  $.10 \times 300 = 30$  weeks of compensation to be paid at the employee's compensation rate.)

6. Loss of Hearing. For the complete loss of hearing in one ear, the employee is entitled to compensation for 70 weeks; for complete loss of hearing in both ears, the employee is entitled to compensation for 150 weeks. N.C.G.S. §97-31(18).

7. Loss of Vision. Total loss of vision in an eye is the equivalent of total loss of the eye, and compensated as such under N.C.G.S. §97-31(16). Where there is 85% or more loss of vision in any eye, this is deemed "industrial blindness" and the employee shall be compensated for total loss of vision of such eye. N.C.G.S. §97-31(19).

8. Disfigurement. In the case of serious facial or head disfigurement, the injured employee is entitled to compensation up to \$20,000. In the case of serious bodily disfigurement, the injured employee is entitled to compensation up to \$10,000. The parties may agree to a figure to resolve disfigurement, or the employee may request that the Industrial Commission conduct a hearing and a "viewing" of the disfigurement, to make an award. Any such hearing will require the assignment of an attorney from the Attorney General's office. N.C.G.S. §97-31(21), §97-31(22).

## CLAIMS MONITORING

1. Employee. The employee is responsible for providing DHHS, through his/her supervisor, with all work notes from the authorized treating physician regarding the employee's work status. This includes any change in the employee's status, such as a release to light or limited duty or release to return to work full duty. The employee is also responsible for providing all wage information from any new employer.

2. Workers Compensation Administrator. The Workers Compensation Administrator is responsible for monitoring the matter to determine the employee's ongoing medical and work status, and any issues with the ongoing management of the workers' compensation claim.

3. Supervisor. The Supervisor is responsible for maintaining contact with the employee or the employee's attorney, with positive emphasis as to the employee's general well-being, receipt of proper medical care, improvement and possible return to work.

4. Third-Party Administrator. The Third-Party Administrator is responsible for overall management of the claim and payment of benefits for the injured employee. In this role, the assigned adjuster will communicate with the employee or employee's attorney, if retained, regarding the ongoing medical treatment and provision of benefits. The adjuster is responsible for appropriately and timely addressing any issues in the delivery of services due.

5. Communication with Medical Providers. In all communications with medical

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providers, the Workers' Compensation Administrator, Supervisor or Third-Party Administrator must comply with N.C.G.S. §97-25.6.

- A. **Written Communications.** The Workers Compensation Administrator or Third-Party Administrator, on behalf of the employer, may communicate with the employee's authorized treating physician in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. In most instances, this communication will be made by the Third-Party Administrator. The employee or employee's attorney, if retained, shall be provided with contemporaneous written notice of the written communication to the physician. The TPA or WCA, on the employer's behalf, may request the following, as set forth in the statute
- a. The diagnosis of the employee's condition;
  - b. The appropriate course of treatment;
  - c. The anticipated time that the employee will be out of work;
  - d. The relationship, if any, of the employee's condition to the employment;
  - e. Work restrictions resulting from the condition, including whether the employee is able to return to the employee's employment with the employer of injury as provided in an attached job description, which includes the physical demands of the job, such as lifting/standing/walking requirements, etc.;
  - f. The kind of work for which the employee may be eligible;
  - g. The anticipated time the employee will be restricted;
  - h. Any permanent impairment as a result of the condition.

The Workers Compensation Administrator or Third-Party Administrator must send a copy of the health care provider's response to the employee or employee's attorney within 10 business days of its receipt by the employer.

- B. **Oral Communications.** The Workers Compensation Administrator or Third-Party Administrator, on behalf of the employer, may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:
- a. The Workers Compensation Administrator or Third-Party Administrator must give the employee or employee's attorney prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
  - b. The Workers Compensation Administrator or Third-Party Administrator shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

C. **Additional Communications.** The Workers Compensation Administrator or Third-Party Administrator may submit to the authorized medical provider, additional

relevant medical information not already contained in the employee's medical records. The Workers Compensation Administrator or Third-Party Administrator, on behalf of the employer, may communicate in writing with the health care provider about the additional information, in accordance with the following procedure:

- (1) The Workers Compensation Administrator or Third-Party Administrator must first notify the employee or employee's attorney in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely objection, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the WCA or TPA may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

6. Case Manager or Nurse Case Manager. It may sometimes be helpful to have the assistance of a case manager, (who may be a registered medical professional such as an R.N.), to assist the employee with scheduling medical appointments and to communicate with the authorized treating physician to monitor the employee's medical progress. The engagement of a case manager may be suggested by the Third-Party Administrator or may be requested by the employer, either by the Workers' Compensation Administrator or the Workers' Compensation Attorney. Assignment of a case manager must be approved by DHHS, through the Workers'

Compensation Attorney. DHHS reserves the right to direct the selection of the case manager from vendors who are approved and contracted to provide these services. Upon approval by DHHS, the Third-Party Administrator shall engage the services of a case manager or nurse case manager. If any issues of concern arise regarding the delivery of services by a case manager from an approved vendor, such concerns should be reported to the Workers' Compensation Attorney and to OSHR.

7. Vocational Rehabilitation. In some cases, it is helpful to engage a vocational rehabilitation specialist to assist an injured employee in the process of identifying skills or developing new skills and/or training, equipping the employee for successful return to work. The engagement of a vocational rehabilitation specialist may be suggested by the Third-Party Administrator or may be requested by the employer, either by the Workers' Compensation Administrator or the Workers' Compensation Attorney. Assignment of a vocational rehabilitation specialist must be approved by DHHS, through the Workers' Compensation Attorney. DHHS reserves the right to direct the selection of the vocational rehabilitation specialist from vendors who are approved and contracted to provide these services. Upon approval by DHHS, the Third-Party Administrator shall engage the services of the selected vocational rehabilitation specialist. If any issues of concern arise regarding the delivery of services by case manager from an approved vendor, such concerns should be reported to the Workers' Compensation Attorney and to OSHR.

8. Preauthorization and Utilization Review. Injured employees are entitled to reasonable necessary ongoing medical treatment with authorized medical providers. The assigned adjuster with the TPA will monitor the employee's ongoing medical treatment and approve all routine medical treatment that is necessary to effect a cure or give relief for the injured employee's work related medical condition(s).

It may be necessary to conduct further review to determine the medical necessity for a recommended procedure or treatment, to assess whether the same is related to the compensable injury or occupational disease. In such instances, the Third-Party Administrator will make recommendation to DHHS. With approval of DHHS, through the Workers' Compensation Attorney, the Third-Party Administrator may then request preauthorization or utilization review to assess the medical necessity, relatedness to the compensable injury, or efficacy of proposed medical treatment. Such services must be approved by OSHR.

The injured employee may also request approval of alternate medical providers or medical treatment wherein similar questions may arise.

If required, preauthorization and utilization review services must be authorized by OSHR in advance; otherwise, the Third-Party Administrator will not receive payment for these services.

If following Utilization Review, the assigned claim adjuster fails to authorize requested treatment, the injured employee may file a medical motion with the Industrial Commission to obtain an Order requiring the State to provide the treatment.

9. Form 90 Report of Earnings. An employee receiving ongoing temporary total disability payments may be required to complete the Form 90 Report of Earnings every 90 days, to verify that the employee is not engaged in employment. The adjuster with the Third-Party Administrator shall send a blank Form 90 Report of Earnings to all employees receiving temporary total disability (TTD) benefits. The Form 90 will be sent by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the form to the Third-Party Administrator. If the injured employee is represented by an attorney, the Form 90 Report of Earnings shall be sent only to the employee's attorney, for response by the employee.

The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90 Report of Earnings. If the Third-Party Administrator has not received the completed Form 90 within 15 days, the assigned claim adjuster will call the employee or his attorney, if represented, and request the form be submitted immediately.

If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of receipt of the form, the Third-Party Administrator shall inform the WCA and WC Attorney. The WC attorney after consulting with the TPA and the WCA, shall recommend whether to pursue the filing of a Form 24 Motion to Suspend Benefits. If it is deemed appropriate, the matter shall be referred to the Attorney General's office for the filing of the Form 24 Motion.

Benefits may be suspended if the Commission issues an Order to suspend the employee's benefits for failure to complete and return a Form 90 Report of Earnings. Benefits shall be reinstated to the employee with back payment as soon as the Form 90 Report of Earnings is submitted by the employee.

## **POTENTIAL FRAUD AND ABUSE.**

1. Responsibility of DHHS Management. When DHHS has good grounds to suspect that an employee is engaged in fraud or abuse of the workers' compensation system, it shall be reported to the Workers' Compensation Administrator, and the Workers' Compensation Attorney, for discussion and decisions about appropriate actions to be taken.

2. The Workers Compensation Attorney shall consult with the Workers' Compensation Administrator and the Third-Party Administrator to formulate an appropriate plan for addressing any fraudulent or abusive behavior by the injured employee. If there is an attorney from the Attorney General's office assigned to the case, that attorney shall also be consulted. Actions to be taken may include social media checks and surveillance by authorized licensed investigators.

3. Surveillance. If DHHS determines that surveillance could be beneficial to show fraudulent activity by an employee or abuse of the workers' compensation program by an employee, the Workers Compensation Attorney, along with any assigned attorney from the AG's office, will follow-up with the Third-Party Administrator to engage appropriate surveillance. After

consulting the Workers' Compensation Administrator, the Workers Compensation Attorney can authorize surveillance. Surveillance within North Carolina shall only be engaged with providers in the network approved by OSHR. Surveillance shall only be engaged for good cause. The Third-Party Administrator shall manage the contracts, billing and reporting, and communications with the vendor selected to conduct surveillance. Any concerns that may arise as to the vendor's provision of services shall be conveyed to the WC Attorney and to OSHR.

*(Examples which might prompt surveillance would be information indicating that an employee receiving ongoing total disability compensation is engaging in activities inconsistent with restrictions given by the authorized treating physician or is engaged in other employment, while receiving ongoing total disability compensation.)*

4. Reports to OSHR. The Workers' Compensation Attorney may determine that the matter should also be reported to the SHWC Division of OSHR. SHWC has created a "Suspicious Activity Referral Form" available at [www.workerscomp.nc.gov](http://www.workerscomp.nc.gov) to be used by all state agencies to report suspected workers' compensation fraud or abuse. This form may be completed and submitted via fax or email or information provided verbally to any OSHR SHWC Division employee. Information may also be provided verbally to the Workers' Compensation Consultant for DHHS.

The OSHR Workers' Compensation Consultant assigned to DHHS will review the information submitted and take appropriate action based upon its content, in coordination with the WC Attorney. Such action may include consultation with OSHR staff, the assigned claim adjuster, medical treatment providers, medical nurse case manager, vocational rehabilitation consultant, or other third parties as appropriate.

## **LITIGATION OF WORKERS' COMPENSATION CLAIMS.**

1. Third-Party Administrator. In any workers compensation claim where litigation is initiated, representation of DHHS by the Attorney General's office is required. Therefore, upon the filing of any requests for mediation, requests for hearing, motions to reinstate benefits, or any other motions or requests in which counsel must represent DHHS, per the Industrial Commission rules, the Third-Party Administrator shall immediately forward a copy of the claim file to the Attorney General's office, Workers' Compensation Section, and shall notify the WC Attorney and WCA of the filing of the motion or other pleading.

2. Workers' Compensation Attorney. The WC Attorney shall consult with the AG Attorney assigned to the case and make or receive any recommendations regarding the handling of the litigation.

3. Attorney General's Office. The AG attorney assigned to the case shall consult with the Workers Compensation Attorney as to further handling of the claim, rendering advice as deemed appropriate. The AG attorney shall keep the Workers' Compensation Administrator, the Workers' Compensation Attorney and the adjuster with the Third-Party Administrator timely

informed of any ongoing developments in the case, including any notices for mediation and hearings, and providing copies of any Industrial Commission orders.

4. Medical Motions. Motions regarding medical treatment may be filed by the employee or the employer. All such Motions will require representation of DHHS by an attorney with the Attorney General’s Office, Workers Compensation Section.

A. Medical Motion. Non-emergency medical motions are filed with the Executive Secretary’s office. These motions shall be determined administratively without telephonic or evidentiary hearing, within 30 days of the receipt. A party may request reconsideration of any order or appeal the order for a full evidentiary hearing by a Deputy Commissioner.

B. Emergency Medical Motion. A motion for emergency medical attention is filed with the Chief Deputy Commissioner, who has discretion to determine if the matter meets such criteria. If deemed an emergency, a ruling on the motion will be issued within 5 days. Either party may appeal the order for an expedited full hearing by a Deputy Commissioner. Following the full hearing, the Deputy Commissioner will issue an opinion within 15 days. Either party may appeal that decision to the Full Commission.

If it is determined the matter is not an emergency, the Office of the Chief Deputy Commissioner will refer the motion to the Executive Secretary for ruling in accordance with medical motion requirements.

5. Form 24 Application to Suspend Payment of Compensation. The Application to suspend ongoing payment of compensation may be filed with the Industrial Commission for the employee’s refusal of suitable employment, or refusal to comply with appropriate medical treatment or vocational services. All such motions must be handled by the Attorney General’s office. Before filing a Form 24 for the employee’s refusal to cooperate with medical or vocational treatment, a Motion for the Industrial Commission to order such cooperation must be filed. To pursue these motions, it is important to maintain proper documentation both through the Third-Party Administrator and the Workers’ Compensation Administrator and supervisor on behalf of the employer. N.C.G.S. §97-27, §97-32.

A. The WCA shall maintain all records regarding the employee’s work status, including any records that show the employee refused suitable employment, or refused to comply with reasonable medical treatment or vocational efforts.

B. The TPA shall coordinate with the WCA and WC Attorney regarding the employee’s status and any refusal to cooperate with suitable employment or reasonable medical or vocational treatment.

C. In any case where it is deemed appropriate by either the WCA or the adjuster with the TPA, to file a Form 24 proceeding or motion to compel compliance with reasonable medical or vocational treatment, the matter shall be reported to the WC Attorney, who

shall then review the matter and consult with both the WCA and the adjuster. Upon approval of the WC Attorney, the case shall be referred to the Attorney General's office for filing of the Form 24 or motion to compel compliance with reasonable medical or vocational treatment.

D. The attorney in the Attorney General's office is responsible for follow-up and filing of the Form 24 or appropriate motion to compel, based upon appropriate documentation provided by the WCA and adjuster with the TPA.

E. The Third-Party Administrator may not unilaterally suspend or terminate ongoing indemnity (TTD) compensation due to the employee's refusal of suitable employment or failure to cooperate with reasonable medical or vocational treatment. An Order to Suspend Benefits from the Industrial Commission is first required.

6. Form 33 Request for Hearing. Form 33R Response. In the event of a dispute in a workers' compensation claim, either party may file a Form 33 Request for Hearing. The opposing party is required to file a response, the Form 33R, within 45 days of receipt of the Form 33. Unless the employee is not represented by an attorney, the matter will be referred to mediation.

A. Upon receipt of a Form 33, the TPA shall immediately notify the WCA, the WC Attorney and shall refer the matter to the Attorney General's office, Workers' Compensation Section, for further handling.

B. Upon receiving notice of the filing of a Form 33, the WCA shall confer with the adjuster for the TPA and the WC Attorney. Upon request from the WC Attorney or the AG attorney assigned to the case, the WCA shall prepare any necessary materials that may be needed for use in the litigation. The WCA shall respond as requested by the AG attorney or the WC Attorney to requests for information, including documents that may be requested as part of discovery in the litigation.

1. Any requests for medical records or personnel records or any other records that contain personally identifiable information are to be sent to the AG attorney of record. If requests are made prior to the assignment of an AG attorney, the WCA shall consult the WC Attorney. No records shall be sent by the WCA directly to the employee's attorney.
2. For all requests for medical records, the employee's attorney must provide a HIPPA release. The AG attorney of record and the WC Attorney shall be notified of any such requests.

C. The AG attorney assigned to the case is responsible for filing the Form 33 response and for handling all subsequent litigation. The AG attorney shall consult with the WC Attorney regarding the matter, including whether DHHS objects to mediation, or

is willing to pursue settlement, selection of a mediator, assessment of the claim’s value and merits, and trial strategies.

D. Mediation. If the matter is referred to mediation, the assigned AG attorney shall be responsible for contacting the WC Attorney to determine whether DHHS objects to the mediation and wishes to be excused from mediation, or will agree to mediate the matter.

E. DHHS may also file a Form 33 Request for Hearing, which must be filed by an attorney with the Attorney General’s office. The WC Attorney is to be consulted prior to the filing of any Form 33.

F. Evidentiary Hearing. Following the filing of the Form 33 and Form 33R, if the matter is not resolved through mediation, or is otherwise excused from mediation, a full evidentiary hearing will be held before a Deputy Commissioner, who will file the opinion and award following the completion of the evidence.

G. Either party may appeal the Deputy Commissioner’s opinion and award to the Full Commission. Either party may appeal an opinion of the Full Commission to the N.C. Court of Appeals. The Attorney General’s counsel of record shall consult the WC Attorney, and secure permission before appealing any Full Commission decision to the Appellate Court. If, due to unforeseen circumstances, the WC Attorney is not available for the time duration for notice of appeal, the AG may appeal, subject to subsequent approval of the WC Attorney or withdrawal of the appeal.

## **CLOSING OF CLAIMS**

1. Consideration for Medicare Set Aside. When the Agency moves forward to try to settle a claim, a determination must be made as to whether a Medicare Set Aside (“MSA”) will be required to protect Medicare’s financial interest in future potential medical expenses, under the Medicare Secondary Payer (MSP) laws. Failure to protect Medicare’s interests when resolving claims may result in financial penalties. A Medicare Set-Aside is required in the following circumstances:

A. When the employee is Medicare eligible at the time of claim settlement and the settlement amount is \$25,000 or greater; or

B. When the employee has a reasonable expectation that he/she will be Medicare eligible within thirty (30) months of claim settlement and the settlement amount is \$250,000 or greater.

Medicare’s interests may be protected by including a Medicare Set Aside agreement (MSA) in the Compromise Settlement Agreement (CSA). These agreements allocate a portion of a workers’ compensation settlement to pay for future medical services related to the workers’ compensation injury, illness, or disease. These funds must be depleted

before Medicare will pay for treatment related to the claimant's workers' compensation injury, illness, or disease.

The appropriate dollar amount for the MSA estimate must be calculated by a vendor with expertise in making such determinations. When DHHS is interested in resolving a claim and an MSA is required for potential settlement, the TPA shall contact the WC Attorney. The WC Attorney shall evaluate the claim and shall communicate with the WCA. The WC Attorney shall determine whether the MSA will be ordered, and the vendor selection. The MSA can then be ordered by the TPA, consistent with the WC Attorney's instruction.

2. COMPROMISE SETTLEMENT AGREEMENTS ("CSA" or "Clincher"). A claim may be settled via compromise settlement agreement entered by the parties, subject to the approval of the Industrial Commission.

A. SETTLEMENT INTEREST. Settlement interest may be communicated to the Third-Party Administrator, to the Workers Compensation Attorney, any counsel of record from the Attorney General's office, or to the Workers Compensation Administrator. When such interest is communicated by an employee or the employee's attorney, it is the responsibility of the person receiving the communication to notify the others. Therefore, any interest in settling a claim conveyed by the employee or employee's attorney to the TPA shall be conveyed to the WCA, the Workers Compensation Attorney and any counsel of record from the Attorney General's office. Likewise, the AG counsel of record shall convey any settlement interest from the employee to the WCA, the TPA and the Workers Compensation Attorney. The WCA shall convey any interest in settlement to the TPA, the Workers Compensation Attorney and any AG counsel of record. The Workers Compensation Attorney shall convey any settlement interest to the TPA, the WCA, and any AG counsel of record.

B. Identification of Claims for Settlement. The Workers' Compensation Attorney shall also independently and in conjunction with Claims Reviews by the Third-Party Administrator and OSHR, review and identify to DHHS facilities, divisions and schools, those cases which the Attorney deems should be evaluated for settlement and/or which are recommended for potential settlement.

C. Settlement Assessment Process. When the Workers' Compensation Attorney receives notice of a party's interest in settlement of a claim, the WC Attorney shall follow-up with the TPA, the WCA, and any AG counsel of record. The WC Attorney may seek a settlement evaluation from the TPA and shall review and assess the same, along with seeking the opinion of any AG counsel of record on the claim. If settlement is deemed a possibility, the following procedures will be followed.

1. The Workers' Compensation Attorney shall request the TPA adjuster assigned to the claim to prepare a settlement evaluation (if not already prepared), which shall be provided to the Workers' Compensation Attorney, the Workers

Compensation Administrator, and to any Attorney General Counsel assigned to the case. Unless otherwise specified, such settlement evaluations will be expected within 5 business days of the request.

2. Following receipt of the Third-Party Administrator's settlement evaluation, the Workers' Compensation Attorney will independently assess the adjuster's evaluation, and the claim's potential settlement value, also consulting any Attorney General Counsel assigned to the case, if applicable, and shall thereafter make recommendation to the facility, division, or school regarding settlement value and options.

3. Upon receiving recommendation of the Workers' Compensation Attorney to a facility, division, or school (*which may be done electronically via email*), that a case should be settled and the proposed settlement amount, the facility, division, or school shall work with the Workers Compensation Attorney to make a decision on the recommendation.

4. Settlement recommendations may also be communicated to the Workers Compensation Attorney by any AG attorney of record on the case. Thereafter, the Workers Compensation Attorney shall review any such recommendation from the AG attorney of record and advise DHHS of a recommendation, which includes input from the AG attorney of record.

3. APPROVAL OF SETTLEMENT FUNDS. Consideration must be given to the budgets of the DHHS facility, division or school when assessing claims for potential settlement funding. Upon recommendation of the Workers' Compensation Attorney, and if applicable, recommendation of any AG counsel of record, the facility, division, or school shall review the matter to make a decision about whether to approve funds to settle the claim. Such decisions should be made whenever possible within 5 business days of communication of the recommendation, and the entire process for approval of funds should be completed within a maximum of 12 business days as set forth below. Some decisions on recommendations from the Workers' Compensation Attorney may need to be delayed due to budgetary constraints. Some recommendations may require more urgent decisions such as if the case is scheduled for mediation or for hearing. Approval for settlement funds should follow the following procedure.

A. Facilities and Schools Approval of Settlement Funds. For all DHHS facilities, settlement funds must be approved by the facility Workers' Compensation Administrator or HR Director, facility Budget Officer or Business Manager and the Facility Director, before being sent to the Workers' Compensation Attorney for approval. Certain state operated healthcare facilities, receive financial support of OSHR allocated funds through the Division of State Operated Healthcare Facilities (DSOHF). For these facilities, in addition to approval of settlement funds by the foregoing facility personnel, DSOHF management also requires approval by DSOHF. If settlement funds come entirely from the facility budget, such as facilities where positions are federally funded (*Examples: Murdoch Developmental Center, Caswell Developmental Center*), DSOHF approval may not be required.

Upon recommendation of the Workers' Compensation Attorney, the facility shall assess finances and make a decision about whether to pursue approval of settlement funds, and whether a request for funds shall also be submitted to OSHR (*see below*), if the facility qualifies. The following procedure shall be followed for approval of funds. Steps for facilities that require DSOHF\* approval are indicated.

1. Within 2 business days of the recommendation from the Workers' Compensation Attorney, if the facility has interest in pursuing settlement, the Workers' Compensation Administrator shall initiate the process for requesting settlement fund approval. The WCA shall make written request for settlement funds (*which may be done electronically via email*) to the in-house budget officer or business manager of the facility, and provide any necessary information or supporting documents.

2. Within 3 business days of receipt of the WCA's written request for settlement funds, the facility budget officer/business manager shall review the request, and either approve or deny the request for settlement funds.

\*DSOHF. If the budget officer/business manager approves, and DSOHF approval is required, then the budget officer/business manager shall submit a written request to DSOHF, to the Business Manager or Budget Officer for approval.

3. If DSOHF approval is not required, upon the budget officer or business managers approval of settlement funds, the WCA shall secure the remaining signatures for fund approval, the WCA or HR Director, and the Facility Director. The WCA shall forward the signed Settlement Approval Request Form to the WC Attorney, for signature by the WC Attorney.

\*DSOHF. If DSOHF approval is required, within 5 business days of receipt of the facility's request for approval of settlement funds, DSOHF shall make a decision on the request and shall notify the facility budget officer/business manager of the decision. DSOHF shall designate at least two separate individuals with authority to approve settlement funds appropriations, and shall arrange for coverage when those individuals are out of the office and unavailable for 5 or more business days.

4. Upon receipt of the decision of DSOHF by the facility budget/financial officer, the officer shall notify the WCA of the decision. The WCA shall complete the necessary paperwork for appropriate signatures as noted on the Settlement Approval Request Form (Approval Form) and shall notify the Workers Compensation Attorney and provide the Form to the Workers Compensation Attorney for the final signature (*which may be done electronically via email as attachment*).

5. Upon receipt of the Settlement Approval Request Form, in compliance with the WC Attorney's recommendation, the WC Attorney shall sign the form

and shall notify the WCA, TPA, and any AG attorney of record of final approval of settlement funds. The WC Attorney may grant all authority to the negotiating adjuster or AG attorney of record at that time or may direct that the WC Attorney first be consulted before maximum settlement authority is extended, above a financial threshold.

B. Divisions Approval of Settlement Funds. For all Divisions, DHHS management requires approval for settlement funds by the Workers’ Compensation Administrator or HR Director, the Division Director and the Division budget or financial officer. The following procedure shall be followed for approval:

1. The WCA shall initiate the process for requesting settlement fund approval and shall make written request for settlement funds to the in-house budget or financial officer for the Division.

2. Within 3 business days of receipt of the request from the WCA, the budget/financial officer of the Division and the Division Director shall make decision about whether the settlement funds recommended shall be approved.

3. Upon approval by the Division Director and budget/financial officer, the WCA shall prepare and obtain signatures on the Settlement Approval Request Form, and then shall forward the Approval Form to the WC Attorney for signature (*which may be done electronically via email as attachment*).

4. Upon receipt of the Approval Form, in compliance with the WC Attorney’s recommendation, the WC Attorney shall sign the form and shall notify the WCA, TPA, and any AG Counsel of record of final approval of funds. The WC Attorney may grant all authority to the negotiating adjuster or AG attorney of record at that time or may direct that the WC Attorney first be consulted before maximum settlement authority is extended, above a financial threshold.

C. Application for OSHR Fund Allocations. As part of the process for approval of funds, concurrent with the above process, the Workers’ Compensation Administrator may also apply for fund allocation from OSHR, from the Workers Compensation Reserve Settlement Fund, if funds are available. (*This procedure shall not apply for settlement funds for employees whose salaries are fully federally funded, for which OSHR funds may not be allocated.*)

D. Attorney General’s Office Approval of Settlement Value. Any case in which settlement value is assessed and funds will be approved at \$75,000 or more, will also require approval of the Attorney General’s office, Workers’ Compensation Section. Such approval may be granted after DHHS in-house approval of funds.

E. Alternative Method for Approval of Settlement Funds. If a facility or

division declines to follow the recommendation of the Workers' Compensation Attorney to pursue settlement of a claim, the WC Attorney may present the matter for consideration by DHHS management. Upon consideration of the matter, including DHHS financial considerations, DHHS management may authorize settlement, and designate a source of settlement funding.

4. **NEGOTIATION OF SETTLEMENT.** The assigned attorney from NC Attorney General's Office or the adjuster with the Third-Party Administrator shall negotiate with Plaintiff or Plaintiff's counsel to reach mutually acceptable terms for a settlement. Determination of who should negotiate will be made based upon the settlement value and whether an Attorney has already been assigned from the Attorney General's office, with such determination to be made by the WC Attorney, pursuant to guidelines of the Attorney General's office. Upon reaching an agreement, notice shall be given to the Workers' Compensation Adjuster, the Workers' Compensation Attorney, and the TPA, if the negotiation was conducted by AG counsel of record.

5. **PREPARATION AND SUBMISSION OF SETTLEMENT AGREEMENT.** Counsel with the Attorney General's Office shall draft the compromise settlement agreement (CSA) for signature by the parties. In addition to the signature line for AG counsel of record, there will be only one approval signature line on the document for DHHS, and that will be for the Workers' Compensation Attorney's signature. Counsel with the Attorney General's office has the responsibility for submitting the compromise settlement agreement and all required supporting documents to the Industrial Commission for approval, and for notifying the Workers' Compensation Attorney and the Third-Party Administrator upon approval of the compromise settlement agreement by the Industrial Commission.

6. **MEDIATION.** In addition to informal ongoing negotiations, the parties may participate in mediated settlement conferences, either voluntarily or by Order of the Industrial Commission. The Workers' Compensation Attorney is to be notified of all upcoming mediations of workers' compensation cases as soon as they are scheduled. Notice is provided by the Attorney General's office. In the event the Attorney General's office does not notify the Workers' Compensation Attorney, and the Workers' Compensation Administrator has notice, the WCA shall notify and follow-up with the Workers' Compensation Attorney as soon as possible.

A. The Workers' Compensation Administrator may be called upon to attend a mediated settlement conference. The WCA may also participate via telephone standby, with agreement of the parties, the AG counsel of record, and the mediator.

B. The adjuster with the TPA may also be called upon to attend a mediated settlement conference. The adjuster may also participate via telephone standby with the agreement of the parties and the AG counsel of record, and the mediator.

7. **THIRD-PARTY SETTLEMENT OR SUBROGATION.** In some cases, DHHS may have interest in recovering for Third-Party Liability for reimbursement of workers'

compensation costs. *An Example might be a motor vehicle accident wherein the employee sustained a compensable injury due to the negligence of a third party.*

- A. Workers' Compensation Administrator. The Workers Compensation Administrator and HR staff shall provide all relevant information regarding the circumstances of the accident, including such information as accident reports, including DMV accident reports, insurance information for any Third Party, time sheets and payroll documents and anything else that may be beneficial in seeking recovery from a Third Party, who may be liable for the employee's accident.
- B. Third-Party Administrator. The adjuster with the TPA shall establish any third-party claim on behalf of DHHS for a workers' compensation claim. The TPA can also negotiate settlement amounts up to \$74,999.
- C. Attorney General Counsel of Record. The AG counsel assigned to the claim shall represent DHHS in any action to recover proceeds from a third-party claim or settlement. The Attorney General's Office, Workers' Compensation Section, must approve any lien settlements in the amount of \$75,000 or greater.
- D. The Industrial Commission approves settlements of claims that include third party liability.

## RECORDS RETENTION

Records Retention Policy must comply with the NC Functional Schedule for State Agencies (most recently revised 2017). See Also *OSHR Standard Operating Procedures for Records Retention*.

See the following link:

[https://files.nc.gov/dncr-archives/documents/files/12\\_legal\\_final\\_2017.pdf?b3tt3h9Yn6alZ2URrLiUTtSwlh4xsHyo](https://files.nc.gov/dncr-archives/documents/files/12_legal_final_2017.pdf?b3tt3h9Yn6alZ2URrLiUTtSwlh4xsHyo)

See RC No. 1225.80 as pertains to Workers Compensation Claims.

Workers' Compensation Program Claims NOTE: All official copies of claims records should be transferred to the North Carolina Industrial Commission (NCIC) in compliance with G.S. § 97-92(a).

Description: Records concerning workers' compensation claims with the Industrial Commission (NCIC); includes NCIC forms, correspondence, reports of accidents and occupation disease, medical records, deposition and hearing transcripts, compensation documentation, and other related records.

RETAIN UNTIL: Received PLUS: 80 years THEN: Destroy

Description: employee reports of injury to NCIC to which no file number is assigned.

RETAIN UNTIL: Received PLUS: 1 year THEN: Destroy\*

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<b>Section V:</b>	<b>Human Resources</b>	<b>Page 38 of 42</b>
<b>Title:</b>	<b>Safety and Benefits</b>	
<b>Chapter:</b>	<b>Standard Operating Procedures for Workers' Compensation Program</b>	
<b>Current Effective Date:</b>	<b>7/1/18</b>	

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SEE ALSO: Accident/Incident Reports (RISK MANAGEMENT), Workers' Compensation Program Administration (HUMAN RESOURCES)

Description: agency's working file for workers' compensation claims by its employees.  
RETAIN UNTIL: Employee returns to work or separates from agency PLUS: 5 years THEN:  
Destroy\*

**STATISTICAL REPORT OF INJURY/ILLNESSES AND W.C. EXPENDITURES**  
*(Required Reporting for the Safety Department)*

1. Statistical Reports. Statistical reports are required by the Safety Program. These reports shall be prepared quarterly and submitted to the DHHS Safety Program Director, with copy to the Workers' Compensation Attorney. Reports are due by the 10th day of the month as shown on the schedule below:

1st Quarter:	January, February, March	- Due April 10th
2nd Quarter:	April, May, June	- Due July 10th
3rd Quarter:	July, August, September	- Due October 10th
4th Quarter:	October, November, December	- Due January 10th

In completing reports the following definitions/procedures apply:

A. To be completed by all Facilities and Divisions:

1. Number of Employees -Total number of employees on payroll for the current reporting period. Year-to-date figures should reflect the number of all employees on payroll from January 1st through the end of the current reporting period (average employment).
2. Number of Man-Hours - Total number of hours worked by all employees this period. Year-to-date should reflect total man-hours from January 1st through the end of the current reporting period. An average employee works approximately 2,000 man-hours per year or 500 per quarter.
3. Report Only Cases - An incident which did not initially result in an injury requiring medical treatment. Any reported incident should be investigated and appropriate measures taken to prevent future occurrences. Insert the number of such incidents which occurred during the current reporting period. This is the same as a non-tabulated case. The year-to-date figure should reflect all such incidents from January 1st to the end of the current reporting period.
4. First Aid Cases - Any one-time treatment and possible subsequent observation of a minor injury which does not ordinarily require follow- up

medical care. Such treatment and observation are considered first aid whether provided in-house or by a physician or other registered health care professional. Insert the number of first aid cases which occurred during the current reporting period. The year-to-date figure should reflect all first aid cases from January 1st to the end of the current reporting period. If a medical bill is obtained or the case is reported to the Third-Party Administrator, do not report as first aid because KRMS will also be reporting the claim.

5. Number of Lost Workdays Resulting from Injuries or Number of Lost Workdays Resulting from Illnesses - Enter in the appropriate category, the total number of days (consecutive or not) during the reporting period on which employees would have worked, but were unable to because of a work-related injury or occupational illness. The number of lost workdays should not include the day of injury or onset of illness, or any days which the employee would not normally have worked, if able to do so. Lost workdays occurring during the reporting period which are associated with cases reported in a prior period should be counted in the current report, unless the employee has been separated or retired. The year-to-date figure should reflect the total number of lost workdays from January 1st to the end of the currently reporting period.

6. Number of Restricted Workdays Resulting from Injuries or Number of Restricted Workdays Resulting from Illnesses - Enter the total number of days (consecutive or not) during the reporting period where, due to a work-related injury or occupational illness, the employee: (a) worked a permanent job, but was not able to perform all duties normally connected with it; (b) was assigned to another full time job on a temporary basis; or (c) worked reduced hours. Restricted workdays occurring during the reporting period which are associated with cases reported in a prior period should be counted in the current report unless the employee has been separated or retired. The year-to-date figure should reflect the total number of restricted workdays from January 1st to the end of the current reporting period.

7. Cost of State Equipment and Private Property - Total estimated cost of replacement or repair of state equipment and private property damaged as a result of an accident this reporting period (equipment, tools, furniture, vehicles, etc.). Year-to-date figures should reflect the total expenditures paid from January 1st through the current reporting period.

B. To be Completed Only by Facilities and Divisions with Employee Health Clinics  
(Items 8-12 on the Statistical Report):

1. Injuries Without Lost Workdays Cases - Enter the number of cases occurring for the first time during the reporting period where there was an injury involving medical treatment and/or loss of consciousness without lost workdays or restricted work activities (OSHA Reportable). If the case is

reported to the Third-Party Administrator, do not count the case. The year-to-date figure should reflect all cases without lost workdays due to injuries from January 1st to the end of the current reporting period.

2. Injuries with Restricted Workdays Only Cases - Enter the number of cases occurring for the first time during the reporting period where, due to a work related injury, the employee: (a) worked the regular job, but was not able to perform all duties normally connected with the job; (b) was assigned to another full time job on a temporary basis; (c) worked reduced hours. If the case is reported to the Third-Party Administrator, do not count the case. The year-to-date figure should reflect all restricted workday cases due to injuries from January 1st to the end of the current reporting period.

3. Injuries Without Lost Workdays Cases - Enter the number of cases recorded for the first time during the reporting period where there was an occupational illness involving medical treatment without lost workdays or restricted work activities. If the case is reported to the Third-Party Administrator, do not count the case. The year-to-date figure should reflect all illness cases without lost workdays from January 1st to the end of the current reporting period.

4. Illnesses with Restricted Workdays Only Cases - Enter the number of cases recorded for the first time during the reporting period where, due to an occupational illness, the employee: (a) worked the regular job, but was not able to perform all duties normally connected with the job; (b) was assigned to another full time job on a temporary basis; or (c) worked reduced hours. If the case is reported to the Third-Party Administrator, do not count the case. The year-to-date figure should reflect all restricted workday cases due to illness from January 1st to the end of the current reporting period.

5. In-House Medical Cost - Cost associated with treatment of injured employees by an in-house medical facility where normal outside medical charges are not incurred.

C. In addition to the above, the Workers' Compensation Administrator shall complete and submit the following pages with the Statistical Report:

1. Immediate Cause/Incident Type Summary;
2. Part of Body; and
3. Nature of Injury.

*(Copies of the Statistical report may be obtained by contacting DHHS Safety Program Director.)*

*For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about Department-wide policies and procedures, contact the [DHHS Policy Coordinator](#).*